United Nations S/2012/32

Security Council

Distr.: General
13 January 2012

Original: English

Letter dated 12 January 2012 from the Chair of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya, which covers the Committee's activities during the period from 26 February to 31 December 2011. The report is submitted in accordance with the note by the President of the Security Council of 29 March 1995 (S/1995/234).

(*Signed*) José Filipe **Moraes Cabral**
Chair

12-20665 (E) 200112

Please recycle

Report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

I. Introduction

1. The present report of the Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya covers the period from 26 February to 31 December 2011.

2. During the reporting period, the Bureau consisted of José Filipe Moraes Cabral (Portugal) as Chair, with the delegation of India providing the Vice-Chair. In 2011, the Committee held one formal meeting and six informal consultations. The web page of the Committee is available from www.un.org/sc/committees/1970.

II. Background information

A. Measures

3. By its resolution 1970 (2011), the Security Council imposed certain measures relating to Libya. These consisted of an arms embargo (covering arms and related materiel to and from Libya, as well as the provision of armed mercenary personnel to Libya), provisions relating to the inspection of cargo in the context of the enforcement of the arms embargo and a travel ban and asset freeze on designated individuals and/or entities. Exemptions to the measures were also included. Resolution 1970 (2011) contained a list of 16 individuals subject to the travel ban, of which 6 were also subject to the asset freeze. The Committee, which consists of all the members of the Security Council, was established to undertake the tasks set out in paragraph 24 of the resolution.

4. By its resolution 1973 (2011), the Security Council imposed additional measures relating to Libya, including the authorization to protect civilians and civilian populated areas under threat of attack in Libya, a no-fly zone in the airspace of Libya, a ban on flights of Libyan aircraft, with exemptions, and a ban on flights of any aircraft, with exemptions, if the States concerned had reasonable grounds to believe that the aircraft contained items the supply of which was prohibited under the arms embargo. The provisions relating to the inspection of cargo, in the context of enforcement of the arms embargo, were strengthened to authorize the use of all measures commensurate to the specific circumstances to carry out such inspections. The scope of the asset freeze was also expanded to include the exercise of vigilance when doing business with Libyan entities, if States had information that provided reasonable grounds to believe that such business could contribute to violence and use of force against civilians. Two additional individuals subject to the travel ban and five entities subject to the asset freeze were listed in the annexes to resolution 1973 (2011). Of the 16 individuals who were previously subject to the travel ban, only 7 were listed as being also subject to the asset freeze.

5. On 24 June 2011, the Committee listed two additional individuals subject to the travel ban and asset freeze and one additional entity subject to the asset freeze.

6. By its resolution 2009 (2011), the Council introduced additional exceptions to the arms embargo and decided that two previously listed entities should no longer be

subject to the asset freeze and that the four remaining listed entities should be subject to a partially relaxed asset freeze. The Council also decided to lift the ban on flights of Libyan aircraft.

7. By its resolution 2016 (2011), the Council terminated the authorization related to the protection of civilians and the no-fly zone.

8. On 16 December 2011, pursuant to a request received from the relevant Libyan authorities, the Committee removed the names of two entities from its list of individuals and entities subject to the travel ban and/or asset freeze. By the end of the reporting period, therefore, 5 individuals were subject to the travel ban, 15 individuals were subject to both the travel ban and the asset freeze and 2 entities were subject to a partial asset freeze.

B. Designation criteria

9. In its resolution 1970 (2011), the Council decided that the travel ban and asset freeze should apply to the individuals and entities designated by the Committee (a) involved in or complicit in ordering, controlling or otherwise directing, the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities, or (b) acting for or on behalf of or at the direction of individuals or entities identified in subparagraph (a).

10. In its resolution 1973 (2011), the Council decided that the asset freeze should apply to all funds, other financial assets and economic resources of the Libyan authorities, as designated by the Committee, or by individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, as designated by the Committee. In the same resolution, the Council decided that the travel ban and asset freeze should apply also to individuals and entities determined by the Council or the Committee to have violated the provisions of resolution 1970 (2011), particularly the arms embargo measure, or to have assisted others in doing so.

C. Mandate of the Committee

11. Pursuant to paragraph 24 of resolution 1970 (2011), the Committee was initially entrusted with undertaking the following tasks: (a) to monitor implementation of the arms embargo, travel ban and asset freeze; (b) to designate individuals subject to the travel ban and to consider requests for exemptions; (c) to designate individuals subject to the asset freeze and to consider requests for exemptions; (d) to establish such guidelines as may be necessary to facilitate the implementation of the measures set out in the resolution; (e) to report within 30 days to the Security Council on its work for the first report and thereafter to report as deemed necessary by the Committee; (f) to encourage a dialogue between the Committee and interested Member States, in particular those in the region, including by inviting representatives of such States to meet with the Committee to discuss implementation of the measures; (g) to seek from all States whatever information it may consider useful regarding the actions taken by them to implement effectively the measures set out in the resolution; and (h) to examine and

take appropriate action on information regarding alleged violations or non-compliance with the measures contained in the resolution.

12. By its resolution 1973 (2011), the Council broadened the scope of the mandate of the Committee to include the measures decided upon in that resolution. The Council directed the Committee to designate Libyan authorities, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, as subject to the asset freeze, within 30 days of the adoption of the resolution and as appropriate thereafter.

13. In carrying out its mandate, the Committee is assisted by a Panel of Experts created by the Secretary-General pursuant to resolution 1973 (2011), in consultation with the Committee, for an initial period of one year.[1] The tasks of the Panel, which works under the direction of the Committee, include the following: (a) to gather, examine and analyse information from States, relevant United Nations bodies, regional organizations and other interested parties regarding the implementation of the measures decided upon in resolutions 1970 (2011) and 1973 (2011), in particular incidents of non-compliance; (b) to make recommendations on actions that the Council, or the Committee or the State, may consider to improve implementation of the relevant measures; (c) to provide to the Council an interim report on its work no later than 90 days after the Panel's appointment (by 10 August 2011), and a final report to the Council no later than 30 days prior to the termination of its mandate with its findings and recommendations (by 15 February 2012).

14. By its resolution 2017 (2011), the Council requested the Committee, with assistance from its Panel of Experts, in cooperation with the Executive Directorate of the Security Council Committee established pursuant to resolution 1373 (2001), known as the Counter-Terrorism Committee, working with other relevant United Nations bodies, including the International Civil Aviation Organization, and in consultation with international and regional organizations and entities, to assess the threats and challenges, in particular related to terrorism, posed by the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, from Libya in the region. It also requested the Committee to submit a report to it on proposals to counter the threat posed by terrorism and to prevent the proliferation of arms and related materiel, including, measures to secure such arms and related materiel, ensure that stockpiles are managed safely and securely, strengthen border control and enhance transport security.

15. Subsequently, in its resolution 2022 (2011), the Council decided that the mandate of the United Nations Support Mission in Libya (UNSMIL) should include the tasks of assisting and supporting, in coordination and consultation with the Transitional Government of Libya, Libyan national efforts to address the threats posed by the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, taking into account, among other things, the report mentioned in paragraph 5 of resolution 2017 (2011).

[1] See S/2011/293, S/2011/313 and S/2011/377 for the letters from the Secretary-General on the appointment of the members of the Panel of Experts.

III. Summary of the activities of the Committee

A. Provisional guidelines of the Committee

16. At its meeting on 25 March 2011, the Committee adopted provisional guidelines for the conduct of its work. The guidelines were subsequently revised on 25 October 2011. Among other things, the guidelines set out the procedures for receiving and processing notifications and requests for exemptions concerning the arms embargo, travel ban and asset freeze, as well as for updating the Committee's list of individuals and entities subject to the travel ban and/or asset freeze. The provisional guidelines are available from the Committee's web page.

B. Consolidated list of individuals and entities

17. Also at its meeting on 25 March 2011, the Committee approved an update to an entry in its consolidated list of individuals and entities subject to the travel ban and/or asset freeze. The list was comprised of the annexes to resolutions 1970 (2011) and 1973 (2011).

18. On 24 June 2011, the Committee added the names of two individuals and one entity to its list.

19. On 3 October 2011, following the adoption by the Security Council of resolution 2009 (2011), by which, effective 16 September, the Council lifted the asset freeze on two of the previously listed entities and partially relaxed it in connection with the four entities remaining on the list, the Committee announced that the updated list had been made available on its web page.

20. On 16 December 2011, pursuant to a request received from the relevant Libyan authorities, the Committee deleted the names of two entities from its list. The updated list is available on the web page of the Committee.

C. Implementation reports

21. In paragraph 25 of resolution 1970 (2011), the Security Council called upon all Member States to report to the Committee within 120 days of the adoption of the resolution (that is, by 26 June 2011) on the steps they had taken with a view to implementing effectively paragraphs 9, 10, 15 and 17 of the same resolution, which are related to the arms embargo, travel ban and asset freeze. At its meeting on 25 March 2011, the Committee approved the text of a note verbale from its Chair addressed to all Member States drawing attention to paragraph 25 of the resolution. A reminder was approved for dissemination on 21 June 2011.

22. To date, the Committee has received reports from 54 Member States (see annex). Unless a State requests that its report be kept confidential, these reports are issued as United Nations documents and posted on the web page of the Committee.

D. Notifications and requests for exemptions

1. Arms embargo

23. In subparagraph 9 (a) of resolution 1970 (2011), the Council provides an exemption to the arms embargo for supplies to Libya of non-lethal military equipment intended solely for humanitarian or protective use and related technical assistance or training, as approved in advance by the Committee. During the reporting period, the Committee approved eight requests invoking subparagraph 9 (a) and one request that invoked paragraph 9 in general. Moreover, no objection was raised with regard to the shipment to Libya of certain items, the request having been submitted without reference to any paragraph of the relevant resolutions.

24. Subparagraph 9 (c) of resolution 1970 (2011) provides an exemption for other sales or supply of arms and related materiel, or provision of assistance or personnel, to Libya, as approved in advance by the Committee. The Committee approved one request invoking subparagraph 9 (c). The Committee did not object, on two occasions, to the transfer to Libya of certain items and materials, both requests also having referred to subparagraph 9 (c).

25. Subparagraph 13 (a) of resolution 2009 (2011) provides an exemption to the arms embargo for supplies to Libya of arms and related materiel of all types, including technical assistance, training, financial and other assistance, intended solely for security or disarmament assistance to the Libyan authorities and notified to the Committee in advance and in the absence of a negative decision by the Committee within five working days of such a notification. Four notifications invoking subparagraph 13 (a) and one notification invoking paragraph 13 in general were received. No negative decision was taken by the Committee in any of the cases.

2. Asset freeze

26. Subparagraph 19 (a) of resolution 1970 (2011) provides an exemption to the asset freeze for basic expenses, after notification by the relevant State to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within five working days of such notification. During the period under review, the Committee received 36 notifications invoking this subparagraph. No negative decision was taken by the Committee in any of the cases, although in two cases the Committee indicated that it would revert to the Member State in question. The processing of one additional notification received by the Committee invoking subparagraph 19 (a) was superseded by the delisting by the Committee of the entity to which the funds belonged.

27. Subparagraph 19 (b) provides an exemption to the asset freeze for extraordinary expenses, provided that such determination has been notified by the relevant State or Member States to the Committee and has been approved by the Committee. The Committee received 48 exemption requests invoking this subparagraph, of which 47 were approved. Most of the requests fell under the category of humanitarian assistance. The processing of one additional exemption request received by the Committee invoking subparagraph 19 (b) was superseded by the delisting by the Committee of the entity to which the funds belonged.

28. Subparagraph 19 (c) provides an exemption to the asset freeze to satisfy a judicial, administrative or arbitral lien or judgement, provided that the lien or judgement was entered into prior to the date of the relevant resolution, is not for the benefit of a listed person or entity, and has been notified by the relevant State or Member States to the Committee. The Committee received two such notifications.

29. Paragraph 21 of resolution 1970 (2011) provides an exemption to the asset freeze for the making of payments by a listed individual or entity, due under a contract entered into prior to the listing of such a person or entity, provided that the relevant States have determined that the payment is not directly or indirectly received by a listed person or entity, and after notification by the relevant States to the Committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, 10 working days prior to such authorization. The Committee received 44 notifications invoking paragraph 21 of resolution 1970 (2011).

30. Paragraph 16 of resolution 2009 (2011) provides an exemption to the asset freeze in relation to the four entities that were listed at the time, for the following purposes: (a) humanitarian needs; (b) fuel, electricity and water for strictly civilian uses; (c) resuming Libyan production and sale of hydrocarbons; (d) establishing, operating or strengthening institutions of civilian government and civilian public infrastructure; or (e) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya.

31. The exemption applies provided that a Member State has given notice to the Committee and in the absence of a negative decision by the Committee within five working days of such a notification; a Member State has notified the Committee that the funds shall not be made available to or for the benefit of listed individuals; the Member State has consulted in advance with the Libyan authorities about the use of such funds; and the Member State has shared with the Libyan authorities the notification submitted pursuant to the paragraph and the Libyan authorities have not objected within five working days to the release of such funds. During the reporting period, the Committee received 15 such notifications. The processing of two additional notifications was superseded by the delisting by the Committee of the entity to which the funds belonged.

32. The above notifications and exemption requests amount to at least $18 billion that were unfrozen through the Committee.

3. Ban on flights of Libyan aircraft

33. Paragraph 17 of resolution 1973 (2011) provided an exemption to the ban then in force on flights of Libyan aircraft based on advance approval by the Committee. The Committee received and approved one such exemption.

E. Inspection reports

34. Paragraph 14 of resolution 1973 (2011) requests Member States that are taking action under paragraph 13 of the same resolution (concerning the inspection of cargo) on the high seas to coordinate closely with each other and the Secretary-General and further requests the States concerned to inform the Secretary-General

and the Committee immediately of measures taken in the exercise of the authority conferred in paragraph 13. Moreover, paragraph 15 of resolution 1973 (2011) requires any Member State, whether acting nationally or through regional organizations or arrangements, when it undertakes an inspection pursuant to paragraph 13 of the resolution, to submit promptly an initial written report to the Committee containing, in particular, explanation of the grounds for the inspection, the results of such inspection and whether or not cooperation was provided, and, if prohibited items for transfer are found, further requires such Member States to submit to the Committee, at a later stage, a subsequent written report containing relevant details on the inspection, seizure, disposal and relevant details of the transfer, including a description of the items, their origin and intended destination, if this information is not in the initial report.

35. During the period under review, the Committee received 23 reports of inspections of cargo that were undertaken, 22 from the North Atlantic Treaty Organization and 1 from a Member State.

F. Queries and requests for guidance: other communications

36. The Committee responded to at least 16 queries or requests for guidance submitted by Member States and bodies associated with the United Nations, the majority of which related to the scope and application of the asset freeze measure.

37. While the no-fly zone was in effect, the Committee was also copied on some communications concerning flights into Libya, either to provide humanitarian assistance or to fly in foreign Government officials for discussions.

G. Briefings and discussions in the Committee

38. In informal consultations on 25 March 2011, which were immediately followed by a formal meeting, the members of the Committee discussed and agreed to adopt several proposals that served to initiate the work of the Committee.

39. In informal consultations on 6 June 2011, consistent with Security Council resolution 1699 (2006), the Committee heard a briefing by the International Criminal Police Organization (INTERPOL) about the value to the sanctions committees of the Council of the INTERPOL notice system.

40. In informal consultations on 7 July 2011, which were convened at the request of a member of the Committee in response to the letter dated 30 June 2011 from the Permanent Representative of France to the United Nations addressed to the Secretary-General (S/2011/402), the members of the Committee discussed the scope and application of the arms embargo in the light of paragraph 4 of resolution 1973 (2011), in which the Council authorized Member States to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya.

41. In informal consultations on 18 July 2011, the Committee heard a briefing by a representative of the Office for the Coordination of Humanitarian Affairs of the Secretariat on the potential impact of sanctions on the civilian population in Libya.

42. In informal consultations on 14 September and 12 December 2011, the Committee heard presentations by the Panel of Experts on its interim and progress reports. On both occasions, questions and comments were raised on the content of those reports and cooperation between the Panel and UNSMIL was emphasized.

43. Also in informal consultations on 12 December, the Committee heard briefings by the Panel of Experts, the Executive Directorate of the Counter-Terrorism Committee, the International Civil Aviation Organization and UNSMIL (through videoconference) on the implementation of paragraph 5 of resolution 2017 (2011), which relates to threats posed by the proliferation of arms from Libya in the region.

H. Consideration of reports and input submitted by the Panel of Experts

44. To date, the Panel of Experts established pursuant to resolution 1973 (2011) has submitted an interim report dated 10 August and a progress report dated 8 September to the Committee. The final report of the Panel is due no later than 15 February 2012. In its interim report, the Panel included 11 recommendations, of which 6 related to the arms embargo, 4 related to the asset freeze and 1 related to a procedural matter concerning communication with the Committee. In its progress report, the Panel included one recommendation relating to the asset freeze.

45. In an annex to its progress report, the Panel included a working paper on the implementation of paragraph 5 of resolution 2017 (2011). The members of the Committee agreed that a working document, incorporating the contributions of various United Nations bodies and departments in relation to the paragraph, would be consolidated by the Panel in February 2012, on the basis of which a Committee report would be submitted to the Security Council shortly thereafter.

46. On occasion, the Panel of Experts has provided the Committee with input for the elements of a draft response to a Member State requesting the guidance of the Committee on a particular matter.

47. On two occasions, pursuant to a request for assistance received from the Panel of Experts in connection with eliciting a response from a Government to a proposed visit by the Panel to a country, the Committee has written to the permanent mission to the United Nations of that country to seek its help in expediting a response to the Panel and to facilitate a possible visit by the Panel to the country.

I. Periodic reports to the Security Council

48. Under the provisions of subparagraph 24 (e) of resolution 1970 (2011), the Chair of the Committee delivered oral reports to the Security Council on the work of the Committee, in public meetings on 28 March, 27 June, 26 September and 22 December 2011 (see S/PV.6507, S/PV.6566, S/PV.6622 and S/PV.6698).

IV. Observations

49. In terms of the work of the Committee, the most noteworthy recent development is the delisting of the Central Bank of Libya and the Libyan Foreign

Bank, on 16 December 2011, upon the request of the relevant Libyan authorities. These two entities are therefore no longer subject to the asset freeze. The Committee will continue to work towards the goal of ensuring that all assets frozen pursuant to resolutions 1970 (2011) and 1973 (2011) are made available as soon as possible to and for the benefit of the people of Libya.

50. The Committee also stands ready to provide guidance on the scope and application of the relevant measures to any Member State that so requests, in order to ensure a clear and consistent understanding by all.

Annex

List of reports received from Member States on the implementation of Security Council resolution 1970 (2011)

Member State	*Document symbol*
Algeria	S/AC.52/2011/32
Andorra	S/AC.52/2011/4
Argentina	S/AC.52/2011/11 and Add.1
Armenia	S/AC.52/2011/39
Australia	S/AC.52/2011/54
Belarus	S/AC.52/2011/45
Belgium	S/AC.52/2011/40
Brazil	S/AC.52/2011/17
Brunei Darussalam	S/AC.52/2011/50
Bulgaria	S/AC.52/2011/2
Canada	S/AC.52/2011/52
China	S/AC.52/2011/27
Colombia	S/AC.52/2011/48
Cyprus	S/AC.52/2011/9
Czech Republic	S/AC.52/2011/46
Denmark	S/AC.52/2011/33
Egypt	S/AC.52/2011/29
France	S/AC.52/2011/42
Gabon	S/AC.52/2011/12
Georgia	S/AC.52/2011/30
Germany	S/AC.52/2011/28
Greece	S/AC.52/2011/18
Iraq	S/AC.52/2011/36
Italy	S/AC.52/2011/38
Japan	S/AC.52/2011/23
Latvia	S/AC.52/2011/41

Member State	*Document symbol*
Lebanon	S/AC.52/2011/49
Liechtenstein	S/AC.52/2011/14
Malta	S/AC.52/2011/1
Malaysia	S/AC.52/2011/47
Mexico	S/AC.52/2011/44
New Zealand	S/AC.52/2011/19
Panama	S/AC.52/2011/13
Philippines	S/AC.52/2011/6
Poland	S/AC.52/2011/26
Portugal	S/AC.52/2011/16
Qatar	S/AC.52/2011/43
Republic of Korea	S/AC.52/2011/21
Republic of Moldova	S/AC.52/2011/25
Russian Federation	S/AC.52/2011/10 and Add.1
San Marino	S/AC.52/2011/35
Serbia	S/AC.52/2011/5
Singapore	S/AC.52/2011/24
Slovenia	S/AC.52/2011/34
Slovakia	S/AC.52/2011/8
South Africa	S/AC.52/2011/20
Sweden	S/AC.52/2011/31
Switzerland	S/AC.52/2011/15
Togo	S/AC.52/2011/51
Tunisia	S/AC.52/2011/53
Turkey	S/AC.52/2011/37
United Arab Emirates	S/AC.52/2011/3
United Kingdom	S/AC.52/2011/7
United States	S/AC.52/2011/22